Dealing with Workplace Violence (Threats)

Employee Relations Considerations

Objectives

- Know when a threat is a threat.
- Understand standards used by MSPB in deciding if a threat has been made.
- Be sensitive to the dangers of overreacting to every statement that sounds like a threat.

Assumptions

- A threat:
  - affects obligation to maintain a safe work place.
  - affects the efficiency of the service.
  - is worse when made in view of other employees.
- Failure to impose a penalty has negative repercussions on agency operations.

You be the Judge

- “If I had a gun right now, I’d start shooting.”
  - Employee fired.
  - MSPB decision: _____
- Employee threatened to kill his supervisor in a statement made to an EAP counselor.
  - Employee fired.
  - MSPB decision: _____

The Five Evidentiary Standards *(The Metz factors)

- Listener's reactions to the statement.
- Listener's apprehension of harm.
- Speaker's intent to make a threat.
- Any conditional nature of the statements.
- The attendant circumstances.

*• **Metz v. Department of the Treasury, 780 F.2d 10 (Fed.Cir. 1986)**

Listener's Reaction to Statement

- "I'll remove your head!"
  - Reaction: called foreman and security and had employee escorted off premises.
  - KEY: Board interested in what listener did.
  - **Robinson v Defense, 58 MSPR 131 (1993)**
- When listener hears remark & reports to supervisor same day, evidence of threat.
  - **Sims v Defense, 58 MSPR 131 (1993)**

Listener's Apprehension of Harm

- Told EAP counselor he wanted to kill 5 agency employees.
  - Employee fired
  - MSPB put employee back to work
    - Counselor did not contact police
    - Not overly concerned
  - Statement was not a threat, according to MSPB
- **Powell v Justice, 73 MSPR 29 (1997)**

Listener's Apprehension of Harm

- Employee told supervisor:
  - there would be a revolution;
  - he would lead it;
  - supervisor would be a victim of it;
  - showed supervisor battle plan.
- Action taken: You're history (fired).
- MSPB affirmed. Supv intimidated/fearful.
- **Thomas v GSA, 794 F.2d 661 (Fed Cir 1986)**

Speaker's Intent to Make a Threat

- Key: Employee's intent to carry out threat irrelevant to determination of intent to make a threat.
- Employee told co-worker he had a "hot piece of lead" for his 1st and 2nd line supvs & would treat them like "Gooks" in "Nam."
  - Removal sustained
- **Battle v DOT, 63 MSPR 403 (1994)**

Any Conditional Nature of the Statement

- “If I had a gun I would shoot you.”
  - v “I’m going to shoot you.”
  - Inverse relationship between degree of being conditional and seriousness of statement.
- If supervisor called security, employee said he would take his head off.
  - Even though conditional, MSPB still affirmed.
- **Robinson v Postal Svc, 30 MSPR 678 (86)**

The Attendant Circumstances

- Want to kill 5 agency employees.
  - Attendant circumstance: Statement made in context of EAP session.
  - MSPB concluded employee was coping with his anger and seeking assistance.
- Key: Avoid overreactions/"knee jerks"
  - Analyze all Metz factors

Attendant Circumstances

- Employee terminated for threatening to burn supervisors house.
  - Appellant claimed she was angry over a proposed suspension.
  - MSPB not impressed. "It goes without saying that most people are angry when they make threats."
  - Nice try, but no cigar.
- **Murphy v DHHS, 34 MSPR 534 (1987)**

Attendant Circumstances

- Other examples:
  - Apology or no apology
  - Distressed at being placed on AWOL
  - High emotional state
  - Presence/absence of provocation
  - Track record/history
- Key: analyze circumstances as if you were the MSPB.

According to the MSPB……

- Threatening a supervisor is without question a serious offense. It is a serious offense.
- A declaration of a desire to injure is not necessarily a threat.
- A person who is the object of a threat need not hear the threat for it to be actionable, as long as someone hears it.

More “According to the MSPB”..

- An employee who made a generalized conditional statement is less likely to have intended to threaten a co-worker than an employee who simply stated a threat.
  - I’m going to kick your ass right after work v If you abolish my job I may have to kick your ass.
  - Key: Not off the hook just because statement was conditional.

Practical Guidance

- Policy in place that threats are not tolerated.
- Need system for reporting threats.
- Prompt investigation.
- “Appropriate” action taken.
- Feedback provided.
- Not “dead in the water” because of difficulty in proving a threat was made.